

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

HON. RANDALL H. WARNER

CLERK OF THE COURT

C. Danos

Deputy

IN RE THE MARRIAGE OF
BERNITA JO VERGNETTI

KENNETH A WINSBERG

AND

FREDERICK ANGELO VERGNETTI

FREDERICK ANGELO VERGNETTI
13842 N 62ND ST
SCOTTSDALE AZ 85254
THOMAS A MORTON

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

A trial in this dissolution case was held on June 16, 2009. Based on the evidence presented, the court makes the following findings and conclusions, and issues this Decree of Dissolution.

I. DISSOLUTION OF MARRIAGE.

The court finds that at least one of the parties was domiciled in Arizona for more than 90 days immediately before the filing of the Petition; that the conciliation provisions of A.R.S. § 25-381.09 and the domestic relations education provisions of A.R.S. § 25-352 either do not apply or have been met; that the marriage is irretrievably broken and that there is no reasonable prospect for reconciliation.

To the extent it has jurisdiction to do so, the court has considered and made provisions for maintenance and disposition of property, and, where applicable, support, custody and visitation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

IT IS ORDERED that the marriage between Petitioner/Wife/Mother Bernita Jo Vergnetti and Respondent/Husband/Father Frederick Angelo Vergnetti is dissolved, and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

II. CUSTODY AND PARENTING TIME.

The parties' minor children lived in Arizona with a parent, or a person acting as a parent, for at least six consecutive months or more before this action was commenced (or at least from the time of birth of the children until this action was commenced), such that Arizona is the home state vested with jurisdiction to make a child custody determination pursuant to A.R.S. § 25-1031(A)(1).

The parents agree about parenting time but disagree about legal custody. The court finds that joint legal custody is in the children's best interests. In support of that finding, the court makes the following findings pursuant to A.R.S. §§ 25-403 and 25-403.01.

1. *The wishes of the child's parent or parents as to custody.* Each parent requests joint legal custody with final decision-making authority. Arizona's statutes, however, do not authorize this designation. *See* A.R.S. § 25-403.01(A) ("In awarding child custody, the court may order sole custody or joint custody.") Rather, a designation that gives one parent final decision-making authority is sole legal custody. *See* A.R.S. § 25-402(5) (defining "sole custody"). The court will therefore decide whether to award either parent sole legal custody.

2. *The wishes of the child as to the custodian.* One child, Kagan, was interviewed, but did not express wishes as to legal custody.

3. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.* The children have bonded relationships with both parents.

4. *The child's adjustment to home, school and community.* From the evidence presented, it appears the children are well adjusted. There is, however, a recent incident involving Kagan that is a great cause of concern for both parents.

5. *The mental and physical health of all individuals involved.* The only mental health issue raised is Mother's recent addiction to painkillers. The court finds, however, that she is in recovery and that the past incidents relating to this problem do not justify awarding Father sole legal custody.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

6. *Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.* Both parents are likely to allow the child frequent and meaningful continuing contact with the other.

7. *Whether one parent, both parents or neither parent has provided primary care of the child.* Both parents have provided primary care.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.* No coercion or duress was used to obtain an agreement regarding custody.

9. *Whether a parent has complied with chapter 3, article 5 of this title.* Respondent has not complied with the parenting education requirement.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.* Neither parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.

11. *The agreement or lack of an agreement by the parents regarding custody.* The parties have not reached agreement regarding joint custody, so this factor does not weigh in favor of either party.

12. *Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.* The court finds that neither parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the children.

13. *The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.* The court finds that, although the parents have disagreements, they presently have and in the future will have the ability to cooperate in decision-making about the children to the extent required by the court's orders. If they have difficulty making decisions jointly, the court will consider appointing a parenting coordinator.

14. *Whether the joint custody arrangement is logistically possible.* Joint custody is logistically possible.

15. *Domestic violence.* No evidence regarding domestic violence was presented.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

Based on the foregoing,

IT IS ORDERED awarding the parties joint legal custody of the parties' minor children, Dylan (DOB 6/28/91), Kagan (DOB 10/5/93) and Olivia (DOB 8/26/02).

IT IS FURTHER ORDERED that the parents shall have parenting time according to the following schedule:

1. Mother shall have parenting time with the children every week from 6:00 p.m. on Sunday through 12:00 noon on Tuesday.
2. Father shall have parenting time with the children every week from 12:00 noon on Tuesday through 12:00 noon on Thursday.
3. Mother shall have parenting time with the children every week from 12:00 noon on Thursday through 12:00 noon on Friday.
4. The parents shall alternate weekends from 12:00 noon on Friday through 6:00 p.m. on Sunday.

IT IS FURTHER ORDERED adopting the holiday and vacation schedule set forth in the Parenting Conference Report.

IT IS FURTHER ORDERED that, within 30 days of this order, the parties shall submit a parenting plan to the court. If the parenting plan is stipulated, the parties may file it. If the parties disagree about one or more elements contained in the parenting plan, they shall lodge with the court a single parenting plan showing each party's proposed language as to each disputed provision. The court will then determine the language that is in the child's best interests.

III. CHILD SUPPORT.

The relevant financial factors required to be included and the discretionary allowances and adjustments that the court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the child support worksheet filed with this decree, which the court incorporates and adopts as its findings with respect to child support.

For purposes of determining child support, the court imputes income to Mother of \$3,041.50, which is the stated income in her Affidavit of Financial Information. It imputes income to Father of \$5,100 per month.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

With regard to the social security payments, that is a matter for the federal government. This court does not have the authority to determine which of these two parents is entitled to receive all or part of those payments on behalf of the children. The court does find that the parents have joint physical custody, to the extent that information is necessary to enable the Social Security Administration to make a determination. Furthermore, under Section 26(A) of the Arizona Child Support Guidelines, the receipt of social security benefits cannot be used in calculating child support.

IT IS ORDERED that Father shall pay child support to Mother in the amount of \$309 per month, plus \$2.25 per month as and for the Clearinghouse Handling Fee for a total of \$311.25 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing July 1, 2009 by Wage Assignment.

All payments shall be paid through the Support Payment Clearinghouse, P.O. Box 52107, Phoenix, AZ 85072-2107.

ISSUED & FILED: Child Support Worksheet.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the Order of Assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support through the Support Payment Clearinghouse. The payment should include the case number and/or ATLAS case number, the name of the party paying support, and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party must be submitted to the Clerk's Office, in writing, within 10 days of the change (A.R.S. § 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of court.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 25-320(J), that Father shall provide health insurance for the minor children.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 25-320(L), in the event Father fails to obtain health insurance for the children, or ceases providing health insurance for the children, Father

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

shall make an alternative cash medical support payment to Mother in the amount of \$172 per month. The alternative cash medical support payment shall be due on the first of the month, beginning on the first of the month following the filing by either party of a "Notice Regarding Health Insurance" stating that Mother has not obtained health insurance for the minor children, or a "Notice of Termination of Health Insurance" stating that the children's health insurance has terminated. The payment shall be made directly to Mother, not through the Clearinghouse. Mother shall use the alternative cash medical support payment to pay or reimburse Father for unreimbursed medical expenses. Any unreimbursed medical expenses for the calendar year above the total alternative cash medical support payments for the calendar year shall be divided by the parties, 65% to Father and 35% to Mother.

IT IS FURTHER ORDERED that any tax exemptions applicable to the parties' children shall be divided as follows:

1. Father. Father is entitled to utilize the exemptions for the children in 2009, 2011, 2012 and in two out of every three years after that.
2. Mother. Mother is entitled to utilize the exemptions for the children in 2010, 2013 and in one out of every three years after that.

A.R.S. § 25-320(B) requires this court to award child support retroactive to the filing of the Petition, taking into account any temporary or voluntary support that has been made. However, neither party presented evidence sufficient to permit the court to make a retroactive adjustment or award. Both parties have therefore waived any claim to a retroactive child support award or adjustment.

IV. SPOUSAL MAINTENANCE.

Wife seeks an award of spousal maintenance. The court finds that none of the criteria set forth in A.R.S. § 25-319(A) for an award of spousal maintenance has been met. Therefore,

IT IS ORDERED denying spousal maintenance.

V. PROPERTY AND DEBT.

A. Rental Property.

The court finds that the rental properties are all Husband's sole and separate property and that none of them currently has value in excess of the loans on those properties. Thus, even if the community had an interest in those properties, the value of that interest would be zero. Therefore,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

IT IS ORDERED declaring that the rental properties are Husband's sole and separate property and denying Wife's claim to those properties.

B. Marital Residence.

The court finds it equitable to award the marital residence to Husband, subject to an offset to Wife for one-half of the equity in the house. The court finds the equity in the house to be \$62,000.

IT IS ORDERED awarding to Husband the marital residence, subject to all lien and encumbrances on it, at 13842 North 62nd Street, Scottsdale, Arizona 85254 with the following legal description: "LOT 5, LA PAZ AT DESERT SPRINGS UNIT 2, ACCORDING TO BOOK 192 OF MAPS, PAGE 20, RECORDS OF MARICOPA COUNTY, ARIZONA."

IT IS FURTHER ORDERED that Wife shall reimburse Husband for the cost of the mortgage for May and June 2009, and for any subsequent month in which she lives in the house.

IT IS FURTHER ORDERED that Husband shall refinance the marital residence into his name within 12 months.

C. Vehicles.

With respect to vehicles,

IT IS ORDERED awarding Husband the Dodge Dakota, subject to all liens and encumbrances on it, which the court values at \$11,145, subject to offset.

IT IS FURTHER ORDERED awarding Wife the Hyundai Elantra, subject to all liens and encumbrances on it, which the court values at \$1,300, subject to offset.

D. Tangible Personal Property.

With respect to tangible personal property,

IT IS ORDERED awarding Husband all the musical equipment and instruments, which the court values at \$3,000, subject to offset.

IT IS FURTHER ORDERED awarding Wife all the artwork, which the court values at \$6,840, subject to offset. The Picasso is not included in this figure. Wife's selling of that piece was within her power to dispose of community property and does not constitute waste.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

IT IS FURTHER ORDERED awarding Wife her Barbie collection without offset.

IT IS FURTHER ORDERED that Wife shall box up the Christmas decorations into two boxes (or, if there are too many to fit into two boxes, two groups of boxes). Husband shall choose which of the two boxes or groups of boxes he will keep.

IT IS FURTHER ORDERED awarding each party the tangible personal property set forth in Trial Exhibit 27.

IT IS FURTHER ORDERED awarding to Husband as his sole and separate property, subject to any liens or encumbrances thereon, all vehicles, household furniture, furnishings and appliances, and other personal property currently in his possession not otherwise disposed of by this order.

IT IS FURTHER ORDERED awarding to Wife as her sole and separate property, subject to any liens or encumbrances thereon, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession not otherwise disposed of by this order.

E. Retirement Accounts And Other Financial Assets.

With respect to Husband's state retirement account, the court finds that Wife has an interest in Husband's retirement but no evidence was presented sufficient to permit the court to either value or divide that account. Therefore,

IT IS ORDERED that the parties shall jointly retain a qualified domestic relations order expert for purposes of preparing a stipulated qualified domestic relations order for the division of Husband's retirement. If the parties cannot stipulate to an order, either may apply to the court for the appointment of a special master.

IT IS FURTHER ORDERED that Wife will be deemed to have waived any claim to Husband's retirement account unless, within 12 months, either a qualified domestic relations order is entered or Wife files an application for appointment of a special master.

With respect to all other retirement accounts and financial assets,

IT IS ORDERED awarding Wife her Bear Stearns account and Husband his Vanguard account without offset.

IT IS FURTHER ORDERED awarding each spouse 50% of all stocks.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

IT IS FURTHER ORDERED awarding Wife the remaining \$4,306 from the home refinance.

F. Husband's Waste Claim.

Husband did not meet his burden of proving waste.

G. Community Debts.

With respect to debts, the court finds that all the debts listed on Trial Exhibit 21, totaling \$46,702, are community debts. Because Husband is being awarded the marital residence and all equity in it, he will be responsible for all these debts for purposes of offsetting the property awarded to him.

IT IS ORDERED that Husband shall be solely responsible for all debt listed on Trial Exhibit 21.

IT IS FURTHER ORDERED that each party shall be responsible for debts in his/her name not otherwise disposed of in this order, and shall indemnify the other from such debts.

H. Reimbursement.

Trial Exhibit 37 reflects certain expenses paid by the parties during the pendency of this matter. The court finds:

1. Husband used \$6,000 of community funds to pay his attorneys' fees, which is a separate expense. Thus, for equalization purposes, Husband will be treated as having received that \$6,000 in community property.
2. \$11,098 in community funds (from the refinance) were used to pay community obligations during the pendency of this matter. No offset is required.
3. Husband paid \$14,085 in community expenses post-service with his separate funds, and Wife paid \$4,125 in community expenses post-service with her separate funds. Both amounts will be considered in determining equalization.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

I. Equalization.

Based on the foregoing, the court finds that Husband must pay Wife \$6,518.50 in equalization of the property awarded and debt allocated under this order, calculated as follows:

	Husband	Wife
Marital Residence (equity)	\$62,000	
Dodge Dakota	\$11,145	
Hyundai Elantra		\$1,300
Music equipment and instruments	\$3,000	
Artwork		\$6,840
Community debts listed on Exhibit 21	(\$46,702)	
Community funds used for attorneys' fees	\$6,000	
Remaining funds from refinance		\$4,306
Community obligations paid post-service	(\$14,085)	(\$4,125)
TOTAL	\$21,358	\$8,321
EQUALIZATION	(\$6,518.50)	\$6,518.50
NET	\$14,839.50	\$14,839.50

IT IS ORDERED that Husband must pay Wife the sum of \$6,518.50, plus interest at the legal rate of 10% from the date of this decree until paid.

IT IS FURTHER ORDERED that Husband shall pay Wife \$500 per month until this obligation, plus interest, is satisfied in full.

IT IS FURTHER ORDERED granting Wife a lien on the marital residence to secure this obligation. Wife may submit a form of lien order.

VI. ATTORNEYS' FEES.

The court has considered the parties' respective financial resources and the reasonableness of their positions pursuant to A.R.S. § 25-324.

IT IS ORDERED that each party bear his/her own attorneys' fees, costs and expenses.

FILED: Exhibit Worksheet.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-007740

06/17/2009

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. RANDALL H. WARNER

JUDICIAL OFFICER OF THE SUPERIOR COURT

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

FREDERICK ANGELO VERGNETTI: Non IV-D Payment Instructions